

MUNICIPALITIES; ELECTIONS; Library Board of Trustees; Sufficiency of petition for supplemental levy election. Iowa Code §§ 384.12, 392.5 (2007); Iowa Code § 378.10 (1973). The board of trustees of a city library exercises exclusive control of the expenditure of funds allocated for library purposes by the city council. Because a city council lacks authority to agree to a limitation on the use of funds generated by a supplemental library levy, an Iowa court would likely uphold a council decision to reject a petition which requests an election to approve a supplemental library levy which includes language attempting to limit use of revenue from the levy. (Scase to Wegner, State Librarian, 3-9-07) #07-3-1

March 9, 2007

Mary Wegner
State Librarian
State Library of Iowa
1112 East Grand Avenue
LOCAL

Dear Ms. Wegner:

You have requested an opinion of the Attorney General concerning application of Iowa Code subsection 384.12(21). Specifically, you ask whether a petition requesting an election to approve a supplemental library levy may properly include language narrowing the proposed use of revenue from the levy. You have provided to us correspondence in which the Ahlers Law Firm advised the Cedar Falls City Attorney's office that the proposed petition form was inconsistent with governing statutes and, therefore, not acceptable. As detailed below, we concur that the inclusion of language in the petition attempting to limit use of revenue from the supplemental library levy would likely be found to invalidate the petition.

The materials accompanying your request letter explain that the Board of Trustees of the Cedar Falls Public Library and residents of the city are interested in pursuing the supplemental library levy authorized by subsection 384.12(21). In 2003, residents of Cedar Falls presented the city council with a petition in the following form, requesting presentation of the levy question to the electors of the city:

We, the undersigned electors of the City of Cedar Falls, Iowa, hereby request a special tax levy of 27 (twenty-seven) cents per 1000 (one-thousand) dollars of evaluation on properties in the City of Cedar Falls. The levy is exclusively for support of purchasing materials in various formats, including but not limited to books, magazines, print media, DVDs, CDs, audio and video materials, on-line resources, and the equipment and the technical processing services needed to support these materials.

Concern about validity of the petition arose from inclusion of the provision limiting use of the revenue. After consulting with the city's bond attorney, the city council found the petition invalid. No action was taken to challenge the council's action. Because you expect that similar petitions may be submitted in the future and the controversy continued, you have requested our

review of the issue. You ask whether the inclusion of language specifying use of the levy revenue invalidates a petition for an election to approve a supplemental library levy.

Code section 384.12 allows cities to impose a number of property tax levies in addition to the basic general fund levy. With regard to the supplemental library levy, the section provides:

384.12 Additional taxes.

A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows: . . .

21. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for support of a public library, subject to petition and referendum requirements of subsection 1, except that if a majority approves the levy, it shall be imposed.

Iowa Code § 384.12(21) (2007). Pursuant to subsection 1, “upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.” Iowa Code § 384.12(1)(a). Section 362.4 provides that an authorized petition is valid if signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election. Iowa Code § 362.4 (2007) (unnumbered par. 1). The petition must include signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition. Id.

Several basic principles of municipal law guide our analysis of your inquiry. First, in some contexts, the inclusion of additional information on a referenda petition does not invalidate the petition. We have held, for example, that although the inclusion of a site location within a petition for school bond election is not statutorily required or explicitly authorized, “we do not believe that inclusion of a site location invalidates the petition.” 1994 Op. Iowa Att’y Gen. 8 (#94-2-3(L)) [1993 WL 122652]. “Iowa case law as far back as 1915 has recognized such petitions as being lawful.” Id., citing Consolidated Independent School District v. Martin, 170 Iowa 262, 152 N.W. 623 (1915). The Iowa court has implicitly recognized the validity of a petition for a school bond election which includes a site location, but has not had occasion to determine whether inclusion of the site in the petition is binding on the board. In the 1994 opinion, we concluded “that the inclusion of a site location within a petition for school bond election is not binding on the receiving school board.” However, if a school board chooses to accept the petition and present a ballot question which includes a site for the project, the board is bound by the outcome of the election. As we reasoned,

determination of school sites is a function of the school board. Iowa statutes neither require nor prohibit the inclusion of a site location on a ballot question seeking issuance of bonds. For many years it has been common practice of school boards to include a site location on bond ballot issues. See 1990 Op. Iowa Att’y Gen. 25; Harney v. Clear Creek Community School Dist., 154 N.W.2d

88, 90 (Iowa 1967); Rodgers v. Independent School Dist. of Colfax, 100 Iowa 317, 69 N.W. 544 (1896). The inclusion of a site location on the ballot question has been treated by Iowa courts as an exercise of board discretion in selecting the school site. If a school board chooses to include a site on the ballot issue and the issue is approved, the board is bound to execute the building project on that site, absent changed or unforeseen circumstances rendering use of the approved site impossible. See Munn v. Independent School Dist. of Jefferson, 188 Iowa 757, 763-69, 176 N.W. 811, 814-16 (1920); Rodgers v. Independent School Dist. of Colfax, 100 Iowa at 321-23, 69 N.W. at 545-46.

1994 Op. Iowa Att’y Gen. 8.

Second, a governmental body may not usurp a decision-making function which is within the province of another governing body. As a general rule, within the parameters allowed by statute, the expenditure of tax revenue is determined and controlled by the governing body of the governmental entity which receives the revenue. In this case, as explained in the opinion letter issued by bond counsel, the Cedar Falls Public Library is not governed by the city council, which receives and acts upon a petition filed under section 384.12. Cedar Falls had a library governed by a board of trustees in 1972, at the time of adoption of what is now Iowa Code section 392.5. Pursuant to this statute, “[a] city library board of trustees functioning on the effective date of the city code shall continue to function in the same manner until altered or discontinued” upon approval of the voters of the city. Iowa Code § 392.5 (2007), as enacted by 1972 Iowa Acts, 64th G.A., ch. 1088, § 196 (pursuant to section 9 of the act, this provision was effective July 1, 1972, if adopted by resolution of city council, otherwise effective July 1, 1974).

We understand that Cedar Falls has enacted ordinances adopting applicable state statutes which were repealed in 1972, as required by section 392.5. These statutes vested control over budgeting and the allocation and spending of library funds with the board of trustees. Iowa Code § 378.10(8) (1973) (the “board of library trustees shall have and exercise the following powers: . . . [t]o have exclusive control of the expenditures of all portions of the municipal enterprises fund allocated for library purposes by the council, and of the expenditure of all moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund, including fines and rentals collected under the rules of the board of trustees”), see also Iowa Code § 378.10(5) (1973) (empowering the board of library trustees to “select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for [the] library”). Under this system of governance, the city council does not directly control the expenditure of revenue raised to support the city library. Therefore, the city council lacks discretion or authority to agree to a limitation on the use of supplemental library levy revenue. Because of this, we believe it would be inappropriate for the city council to include language limiting use of revenue from the levy in the ballot question which is presented to the voters.

This observation does not end our inquiry. The question remains whether a petition which includes limiting language is sufficient to trigger submission to the voters of a basic ballot

question regarding collection of the supplemental levy “for the support of the public library.” We believe that an Iowa court would likely find that language proposing a limitation on use of the revenue invalidates the petition. If the statement of the issue to be voted on which is included in a referenda petition varies significantly from the language of the statute authorizing the petition, the petition may be invalid. In Petersen v. Davenport Community School District, 626 N.W.2d 99 (Iowa 2001), the court found that a petition for an instructional support levy was defective and invalid as a matter of law because persons signing the petition could have incorrectly inferred from the language of the petition that the election was necessary in order for the tax to be collected. The statute under consideration in Petersen allowed a school board to approve collection of the instructional support levy for a five-year period without calling for an election. If a petition requesting “that an election be called to approve or disapprove the action of the board in adopting the instructional support program” was received, the tax could not be imposed unless approved by the voters. Id. at 103, quoting Iowa Code § 257.18(2) (1999). The court was called upon to determine whether the local school board erred in rejecting a petition which requested an election “to determine whether the . . . school district should participate in the instructional support program.” Id. at 103-04. In determining that the school board correctly rejected the petition, the court reasoned:

While at first blush this difference in wording may seem slight, it is in fact significant. The language contained in plaintiffs’ petitions failed to inform those persons signing them that the issue to be decided in the election was the validity of the action already taken by the board of education. Based on that omission and the language that was in fact used, signers could infer that an election was necessary in order to have the instructional support levy. Such a belief could entice persons who favored the levy to sign the petitions. Affidavits were filed by some signers indicating that this had in fact occurred. We conclude that the statement of the issue to be voted on deviated sufficiently from the realities of the statutory procedure that the petitions were invalid as a matter of law.

Id. at 104.

Returning to the question at hand, subsection 384.12(21) authorizes imposition of “[a] tax . . . for support of a public library” upon receipt of a petition and approval of the levy by the voters. The statute does not require or explicitly prohibit inclusion of a specific statement regarding use of the levy to be included in the petition. As discussed above, the expenditure of tax revenue generated to support the library is determined and controlled by the governing body of the library – the board of trustees. If the voters approve a supplemental library tax levy to be used to “support the public library,” then the trustees can appropriate the funds for any lawful use to support the library.

The Petersen case instructs that a referenda petition which does not fairly set forth the matter to be voted upon is invalid as a matter of law. We have determined that the city council

lacks authority to approve a ballot question which limits use of the levy. Individuals who sign a petition asking for an election to approve a supplemental library levy for a limited use, such as purchasing books and materials for the library, may do so primarily because they believe the library does not have sufficient funds available for acquisitions. It is quite possible that some people who want an opportunity to approve the tax, with use limits, might not sign a petition for an election to authorize the library levy without establishing restrictions on use of the revenue. Therefore, we conclude that an Iowa court would likely uphold a council decision to reject a petition which requests an election to approve a supplemental library levy which includes language attempting to limit use of revenue from the levy.¹

Sincerely,

Christie J. Scase
Assistant Attorney General

¹ The materials you provided to us indicate that the voters in a number of Iowa cities have approved ballot questions authorizing collection of the supplemental library levy and directing use of revenue from the levy. This opinion should not be read as calling into question the validity of those levies. Our analysis is limited to the validity and effect of a petition requesting an election to approve the levy. We decline to speculate in this opinion on the validity of a levy that has been approved by the voters and implemented. See Op. Iowa Att’y Gen. # 00-2-1 [2000 WL 33258490].